



COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF GENERAL SERVICES

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5200  
DUANE P LEIB, DIRECTOR

**REQUEST FOR PROPOSAL PS- # 952  
ADDENDUM NO. 1  
ENVIRONMENTAL MONITORING AND REPORTING SERVICES FOR  
NACIMIENTO WATER PROJECT**

**April 18, 2007**

1. Please note the following changes to Request for Proposal PS-#952. All changes shall be incorporated in and become part of the respective proposal.

**Exhibit D has been changed to the attached.**

2. All other specifications, provisions, and conditions remain unchanged.

JACK MARKEY – SUPERVISING BUYER

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**ACKNOWLEDGMENT**

\_\_\_\_\_  
Dated

The foregoing addendum is hereby acknowledged and was considered in final submission of Request for Proposal PS-#952, to be opened on May 11, 2007.

\_\_\_\_\_  
Proposer

\_\_\_\_\_  
Authorized Signature

**PLEASE SIGN ACKNOWLEDGEMENT AND RETURN WITH PROPOSAL.**

## SUBCONSULTING AGREEMENT

Subconsulting Agreement No. \_\_\_\_\_

This Subconsulting Agreement is entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **JACOBS** \_\_\_\_\_ **INC.** (hereinafter referred to as "Jacobs"), whose address is \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ corporation, (hereinafter referred to as the "Subconsultant"), whose address is \_\_\_\_\_, for the performance of services as described in the Scope of Services which is attached and set forth as Appendix I.

### WITNESSETH

**WHEREAS**, Jacobs has entered into a contract dated \_\_\_\_\_ and titled \_\_\_\_\_ with \_\_\_\_\_ ("Owner") for the \_\_\_\_\_ Project (the "Prime Contract"); and

**WHEREAS**, Jacobs is desirous of retaining the Subconsultant for the purpose of providing the Scope of Services in furtherance of Jacobs' responsibilities under the Prime Contract; and

**WHEREAS**, the Subconsultant is prepared to render such specialized services on the terms of this Agreement;

**NOW, THEREFORE**, the parties for and in consideration of the mutual promises and covenants contained herein agree as follows:

### ARTICLE 1 THE PRIME CONTRACT

- A. Subconsultant acknowledges that it is familiar with and understands all of the documents which form a part of the Prime Contract, including those documents and clauses that are incorporated therein by reference. In addition to the provisions of this Agreement, Subconsultant agrees to be bound to Jacobs and to assume toward Jacobs all the obligations, liabilities, responsibilities, conditions, requirements and duties that Jacobs, by the Prime Contract or applicable laws, assumes toward or is bound to Owner, directly or indirectly, insofar as the Prime Contract and the applicable law apply to the services to be performed under this Agreement. Subconsultant shall also be bound to the same limitations, restrictions and restrictive conditions upon its rights, privileges, remedies and powers toward Jacobs as Jacobs is so limited, restricted and restrictively conditioned toward Owner, directly or indirectly, by the Prime Contract or applicable law. In addition, it is agreed that Jacobs may exercise the same rights, powers, privileges and remedies toward Subconsultant as Owner may exercise, directly or indirectly, toward Jacobs by the Prime Contract or applicable law. This Section applies to administrative, procedural and risk allocation provisions of the Prime Contract as well as to provisions of the Prime Contract dealing with the scope and character of the services to be performed. The entire Prime Contract is incorporated by reference as part of this Agreement and attached hereto as Appendix IV.
- B. In the event of any conflicts or ambiguities between or among this Agreement and the Prime Contract, then the stricter, greater or higher quality requirement shall control.

However, where the issue is the scope or quantity of services required of the Subconsultant, the requirements of this Agreement, including its Appendices, shall prevail over any conflicting requirements of the Prime Contract.

- C. Time periods stated in the Prime Contract for compliance with reporting and notification requirements shall be reduced by fifty percent (50%) in their application to the Subconsultant, so that Jacobs will be notified in time to permit it to make a corresponding report or notification to the Owner.
- D. This Agreement shall be governed by and construed in accordance with the state law which governs the Prime Contract.

## **ARTICLE 2 COMPENSATION AND PAYMENT**

- A. Subconsultant shall be compensated for its services in accordance with the provisions of Appendix II – Compensation and Payment, attached hereto and by this reference made a part hereof. Subconsultant's invoices must be submitted on Owner furnished forms, if required, and must include all appropriate details, including dates and personnel involved in all services performed on behalf of the Subconsultant.
- B. Payment by Jacobs to the Subconsultant shall be made against a properly itemized invoice within seven (7) days after Jacobs' receipt of its payment from the Owner. **Receipt of payment from the Owner for the Subconsultant's services is a condition precedent to payment by Jacobs to Subconsultant.**

## **ARTICLE 3 CHANGES IN SERVICES**

- A. Jacobs reserves the right, without impairing this Agreement, to order changes or alterations in the services to be performed hereunder. If changes or alterations, ordered in writing by Jacobs, affect the cost or progress of the services, adjustments shall be made in the time for performance or compensation owing to Subconsultant, as the case may be, as mutually agreed upon in writing, between Jacobs and Subconsultant.
- B. Any additional service Subconsultant performs without a written authorization signed by Jacobs will be at Subconsultant's sole cost and expense.

## **ARTICLE 4 SCHEDULE AND TERMINATION**

- A. Subconsultant shall comply with the time schedule which is included in Appendix I. Time is of the essence of this Agreement.
- B. It is expressly agreed and understood that this Agreement may be terminated at any time by Jacobs, with or without cause. If Jacobs should elect to terminate this Agreement, then Jacobs shall give the Subconsultant written notice stating such intent to terminate.
- C. If the stated reason given by Jacobs for termination is for cause, and the Subconsultant fails to remedy the failure or breach within ten (10) days of the notice, then Jacobs shall have the right to terminate this Agreement at the end of such notice period. In such event,

Subconsultant's sole compensation shall be for fees earned to date of termination, less any amounts due Jacobs as well as damages arising from the Subconsultant's breach.

- D. If Jacobs' desire is to terminate this Agreement for any reason not amounting to a default by Subconsultant, then the Subconsultant's sole remedy in such case shall be the value of such services properly rendered up to the time of such termination plus a reasonable profit thereon, less any amounts previously received by the Subconsultant and any amounts then owing to Jacobs for any reason. In no event shall Subconsultant be entitled to anticipated profits as a result of termination by Jacobs. If Jacobs should terminate this Agreement for cause and it is later determined that cause did not exist for such termination, the termination will be deemed as one occurring under this paragraph.

## **ARTICLE 5 INDEPENDENT CONTRACTOR**

- A. It is understood and agreed that Subconsultant shall perform the services hereunder as an independent contractor and not as an employee of Jacobs. Subconsultant is responsible for the means and methods used in performing its services under this Agreement. Accordingly, Subconsultant, its employees and agents shall not be eligible for any employee benefits including, but not limited to Workers' compensation, insurance, pension, health or life insurance, short or long-term disability, accidental death or dismemberment, or other benefits offered by Jacobs to its employees.
- B. Jacobs will make no deductions from any of the payments due to Subconsultant hereunder for state or federal tax purposes, including but not limited to, social security, income tax withholding, disability, and other payroll tax requirements, except as necessary to comply with law or to protect Jacobs' interests. Subconsultant agrees that it shall be personally responsible for any and all taxes and other payments due on payments received from Jacobs hereunder.

## **ARTICLE 6 QUALITY OF SERVICES**

- A. Subconsultant shall perform its services in a diligent, prudent and workmanlike manner consistent with (i) generally accepted professional practices and standards for nationally recognized firms engaged in similar services, and (ii) in accordance with the terms and conditions of this Agreement and such standards, specifications and rules as shall be adopted by the Prime Contract. In the event that the services of Subconsultant fail to conform to the foregoing requirements, without waiver of or prejudice to any other rights or remedies Jacobs may have and without limitation of Subconsultant's representations hereunder, Subconsultant covenants and agrees to make good such deficiencies and any damage or loss caused by the deficient services at Subconsultant's expense and without cost to Jacobs. Neither acceptance of all or any part of the services by Jacobs, nor any payment made by Jacobs, shall relieve the Subconsultant of its responsibilities hereunder.
- B. Subconsultant shall have a documented Quality Assurance / Quality Control (QA/QC) program that provides for checking and reviewing of its services for accuracy and correctness. Prior to submission of final documents, Subconsultant shall check and review Subconsultant's services for accuracy and correctness according to the QA/QC program. Subconsultant shall maintain written records of these checks and reviews and, upon request by Jacobs, shall supply copies of the Subconsultant's QA/QC process

documentation. Jacobs shall be permitted to conduct independent audits to verify that Subconsultant's QA/QC processes are being followed, and Subconsultant shall fully cooperate with such audits. Should the Subconsultant not have an acceptable documented QA/QC program, Jacobs shall have the right to require that Subconsultant comply with any of Jacobs' QA/QC processes. Failure by Subconsultant to comply with these QA/QC requirements shall be a material breach of this Agreement. Nothing in this paragraph shall in any way limit Subconsultant's responsibility or liability for any errors or omissions in its or its subconsultant's services.

## **ARTICLE 7 INDEMNITY**

- A. Except as otherwise provided in subparagraphs 2 and 3 below, Subconsultant shall to the fullest extent permitted by law, defend, indemnify and save harmless Jacobs, its parent and affiliated companies, the Owner, the County of San Luis Obispo, and the directors, officers and employees of each of them (the "Indemnitees") against any and all claims, demands, damages, costs, expenses, judgments, liabilities, other losses or expenses (including court costs and attorney's fees) (hereinafter collectively "claims") that arise out of or made in connections with Subconsultant's errors or omissions, breach of contract, intentional misconduct, or negligent acts relating to the performance of any duty, obligation or work under this Agreement. The above obligation to defend, indemnify and hold harmless shall be effective and shall extend to all such claims in their entirety, even when such claims arise from the comparative negligence of the Indemnitees. But, Jacobs, its affiliated companies and their respective directors, officers and employees shall be solely responsible for the amount of a judgment rendered solely against any of them if such judgment is based upon a specific finding of sole negligence or willful misconduct on the part of any of them and Owner and its directors, officers and employees shall be solely responsible for the amount of a judgment rendered solely against any of them if such judgment is based upon a specific finding of active negligence on the part of any of them. In no event; however, will the indemnity provisions contained in this Article require Subconsultant to pay the amount of any the judgments described in the last sentence. If the Subconsultant's duty to defend any of the Indemnitees becomes operative, this duty includes the duty of providing a separate legal defense to any of the Indemnitees if any of them determine that joint representation is not in the best interest of them. Subconsultant acknowledges that for the purpose of indemnifying the Indemnitees under this Article, Subconsultant waives any claimed right to assert any worker's compensation immunity against the Indemnitees in suits brought by Subconsultant's employees in which any of the Indemnitees is made a party.

1. The preceding paragraph applies to any and all such claims, regardless of the nature of the claim or theory of recovery. For purposes of the paragraphs found in this Article, "Subconsultant" shall include the Subconsultant and/or its agents, employees, subcontractors or other independent contractors hired by or directly responsible to Subconsultant.

2. Nothing contained in the foregoing indemnity provisions shall be construed to require Subconsultant to indemnify the Indemnitees against any responsibility in contravention of Civil Code § 2782.

3. It is the intent of Jacobs and Subconsultant to provide the Indemnitees the fullest indemnification, defense and "hold harmless" rights under the law. If any words contained

in this Article are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Agreement and the remaining language shall be given full force and effect.

4. Subconsultant has been hired by Jacobs because of Subconsultant's specialized expertise in performing the scope of services set forth in Appendix I to this Agreement. Subconsultant shall be solely responsible for this scope. Jacobs or Owner's review, approval and/or adoption of any of Subconsultant's scope shall rely on Subconsultant's specialized expertise and shall not relieve Subconsultant of its sole responsibility for its scope of services. Under no circumstances shall any act or omission of the Indemnitees relating to any review, approval and/or adoption of any Subconsultant services constitute either sole negligence on the part of Jacobs or active negligence on the part of the Owner.

- B. Subconsultant agrees to defend, indemnify and save harmless the Indemnitees from any and all claims, royalties, damages, and costs arising out of Subconsultant's or its subconsultant's services resulting from (a) any infringement, or alleged infringement of any patents or for the misuse of any patented article by Subconsultant, or its subconsultants, or (b) the infringement or alleged infringement of any patents caused by Owner's use or operation of the results of the services performed hereunder following the completion thereof by Subconsultant or (c) the use or misuse by Subconsultant or its subconsultants of any confidential information or secret processes.
- C. The Subconsultant shall defend, indemnify and hold Indemnitees harmless from any and all claims and liens for labor, services or material furnished by the Subconsultant or its employees, agents and subconsultants under this Agreement.
- D. The obligations expressed in this Article shall survive the termination or expiration of this Agreement.

## **ARTICLE 8 INSURANCE**

- A. Subconsultant shall purchase and maintain at its own expense, insurance covering worker's compensation and employer's liability, automobile liability (all owned and non-owned vehicles), commercial general liability on an "occurrence" rather than a "claims-made" basis and professional liability insurance. The minimum limits of liability shall be as follows unless otherwise modified or required:

Worker's Compensation: in accord with statutory requirements

Employer's Liability: \$500,000 per claim or in accord with statutory requirements  
(whichever is greater)

Automobile Liability: \$1,000,000 per occurrence combined single limit for bodily  
injury or property damage

Commercial General Liability: \$2,000,000 per occurrence combined single limit for  
bodily injury and property damage

Professional Liability: \$2,000,000 per claim

- B. The professional liability insurance must cover the scope of services set forth in Appendix I to this Agreement. Subconsultant's commercial general liability insurance (and any following form excess or umbrella policies needed to meet the aforementioned limits) policy



shall be endorsed to name Indemnitees as additional insureds using ISO CG 20 10 11 85 or its equal and to be primary with respect to any applicable insurance that the Indemnitees may have. All of Subconsultant's insurance policies shall be endorsed to express the insurance carriers' waiver of all rights of subrogation against Indemnitees. Subconsultant shall require all subconsultants and suppliers of any tier performing work at the Project or premises to have the same insurance as required of Subconsultant above (including additional insureds and waivers of subrogation) and shall provide evidence of it to Jacobs upon request. Any insurance, limits of coverage, or the absence of them, shall not limit in any way Subconsultant's liabilities or obligations, or Jacobs' rights or remedies, under this Agreement or at law.

- C. Immediately upon execution of this Agreement and before any services are begun, Subconsultant shall provide Jacobs a certificate(s) of insurance on forms approved by Jacobs indicating required Subconsultant insurance coverages, including attaching the definition of professional services and any pollution exclusion (if any) under its professional liability insurance policy, and setting forth the applicable limits and endorsements. The certificate(s) shall contain language confirming the additional insured and waiver of subrogation requirements in Paragraph B. The certificate(s) shall contain a provision which shall provide for thirty days prior written notice by the insurer to Jacobs before modification, cancellation or termination of such insurance. In addition, the certificate(s) of insurance must state the name of the Project and the Agreement Number from the first page of this Agreement.

The certificate(s) should be sent to:

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## **ARTICLE 9 HEALTH, SAFETY AND ENVIRONMENTAL PROCEDURES**

- A. Subconsultant shall take all necessary precautions for the safety of its employees and shall perform all its services in compliance with all applicable health, safety and environmental laws, ordinances, regulations and policies. Subconsultant shall have documented environmental, safety and health procedures that meet or exceed "Jacobs Health, Safety and Environment Requirements", attached as Appendix III, to the extent applicable to Subconsultant's services. Subconsultant shall submit a copy of these procedures to Jacobs along with the name of the Subconsultant safety officer responsible for assuring compliance therewith.
- B. Subconsultant shall immediately report to Jacobs any OSHA, EPA or similar regulatory agency activities arising from or related to services performed under this Agreement. Subconsultant shall report any injuries or illnesses to Jacobs arising from or related to services performed under this Agreement ("incidents") as soon as possible and not later than 24 hours after the incident occurred.
- C. Subconsultant shall submit monthly safety reports indicating, with respect to the services performed under this Agreement, the work-hours for the month; work-hours year-to-date; number of injuries or illnesses that received treatment by a physician; total number of

restricted duty cases; number of lost time (days away) cases; and identification of any OSHA violations, notices of violations or other significant events relating to environment, safety or health.

- D. Jacobs shall be permitted, but not required, to conduct independent audits to verify that Subconsultant's environmental, safety and health procedures are being followed, and Subconsultant shall fully cooperate with such audits. Should the Subconsultant not have an acceptable documented environmental, safety and health procedures, Jacobs shall have the right, but not the obligation, to require that Subconsultant comply with the "Jacobs Health, Safety and Environment Requirements" to the extent applicable to Subconsultant's services. Failure by Subconsultant to comply with these environmental, safety and health requirements shall be a material breach of this Agreement.
- E. The foregoing notwithstanding, Subconsultant is solely responsible for the preparation of health, safety and environmental procedures (HSE procedures), coordination of same with those of the Owner, Jacobs and others, and for monitoring and enforcing HSE procedures with respect to Subconsultant's services. Any action taken by Jacobs intended to enhance the environment or safety or health of workers or the public shall not be construed to limit Subconsultant's responsibility for these matters nor expose Jacobs to any additional liability.
- F. The provisions of this Article are for the sole benefit of Jacobs and shall not be used or construed to provide any rights to Subconsultant's employees, agents or any third parties.

## **ARTICLE 10 CLAIMS**

- A. Subconsultant shall give Jacobs written notice within five (5) days after the happening of any event which Subconsultant believes may give rise to a claim by Subconsultant for an increase in the Agreement price or in the scheduled time for performance. Within fourteen (14) days after the happening of such event, Subconsultant shall supply Jacobs with a statement supporting Subconsultant's claim, which statement shall include Subconsultant's detailed estimate of the change in Agreement price and scheduled time for performance occasioned thereby. Jacobs shall not be liable for, and Subconsultant hereby waives, any claim or potential claim of Subconsultant of which Subconsultant knew or should have known and which was not reported by Subconsultant in accordance with the provisions of this Article. Subconsultant agrees to continue performance of its services during the time any claim of Subconsultant hereunder is pending. Jacobs shall not be bound to any adjustments in the Agreement price or scheduled time for performance requested in Subconsultant's claim unless expressly agreed to by Jacobs in writing. No claim hereunder by Subconsultant shall be allowed if asserted after final payment under this Agreement.

## **ARTICLE 11 DISPUTE RESOLUTION**

- A. Consistent with Article 1, Jacobs and Subconsultant shall be bound by any provisions in the Prime Contract relating to the resolution of disputes. However, if a dispute arises between Jacobs and Subconsultant which does not involve a claim by or against the Owner, and does not otherwise affect the rights of the Owner, the following procedures shall control.



- B. If any claim or dispute cannot be resolved between the project managers for the parties, or through negotiations between the chosen executives of each of the parties, then the parties shall attempt to resolve the dispute through non-binding mediation. The non-binding mediation process is agreed to be a condition precedent to the right of either party to initiate litigation as a means of resolving any dispute under this Agreement.
- C. If mediation is to be utilized, the parties shall select a single unrelated but qualified Mediator who shall hold an informal hearing (not to exceed one day) during which each party shall present its version of the facts, its assessment of damages, and its argument. Each party shall provide the Mediator and the other party with copies of all documents it deems relevant to its position at least ten (10) days prior to the scheduled date of the mediation hearing. A copy of the Agreement will be provided to the Mediator. Formal written arguments, legal memorandum, and live testimony are discouraged but may be permitted at the discretion of the Mediator.
- D. Upon conclusion of the presentations at the informal hearing, the Mediator will meet with both parties and provide each of them, on a confidential basis, with his/her views of the strengths and weaknesses of their respective positions. The parties will then, with the assistance of the Mediator, attempt to resolve the matter. If the parties cannot achieve resolution within forty-eight (48) hours of the hearing, the Mediator will, within seven (7) additional days, issue a written, non-binding decision on the issue.
- E. The costs and expenses of the Mediator shall be shared equally by the parties. If the matter has not been resolved utilizing the processes set forth above and the parties are unwilling to accept the non-binding decision of the Mediator, either or both parties may elect to pursue resolution through litigation. In the event of any litigation between the parties, it is agreed and stipulated that the case shall be heard and decided by the court, without a jury.
- F. It is agreed that the nonprevailing party in litigation shall pay, in addition to any judgment, reasonable attorneys' fees, prejudgment interest and costs incurred by the prevailing party as a result of the court proceedings.

## **ARTICLE 12 SUBCONTRACTS**

- A. This Agreement is personal to Subconsultant, and Subconsultant shall not sublet performance of all or any portion of the services under this Agreement without notifying Jacobs of the intended subletting and obtaining Jacobs' prior approval in writing of the intended subconsultant. If requested by Jacobs, Subconsultant shall furnish Jacobs a copy of the proposed subcontract for Jacobs' approval of the terms and conditions thereof and shall not execute such subcontract until Jacobs has approved such terms. Failure of Subconsultant to comply with this Article may be deemed by Jacobs to be a material breach of this Agreement.
- B. Subconsultant guarantees that any and all subconsultants of Subconsultant for performance of the services will comply fully with the terms of this Agreement applicable to the portion of the services performed by them.

## **ARTICLE 13**

## **ASSIGNMENT**

- A. It is expressly understood and agreed that Subconsultant's responsibilities and obligations under this Agreement are non-delegable personal services. Subconsultant shall not sublet or assign the services, or any part thereof, without first obtaining written consent of Jacobs. In addition, any assignment of monies due or sale of accounts against this Agreement without proper notification to and prior written acknowledgement from Jacobs, as to the conditions of such an assignment or factoring, shall be grounds for termination. Any assignee must assume all obligations hereunder in writing to be valid as against Owner and Jacobs. Nothing contained in this Agreement shall create any contractual or third-party beneficiary relationship between any parties other than Jacobs and Subconsultant.
- B. In connection with the assignment of any monies to become due hereunder, Jacobs reserves the right to require the below listed details. Failure to comply with these requirements prior to assigning monies due or entering a factoring agreement may result in extra costs incurred by Jacobs and/or Owner. Subconsultant, therefore, agrees to indemnify Jacobs and Owner against any and all costs and charges incurred due to Subconsultant's failure to pre-notify and provide the below listed information, as applicable:
1. A Letter of Rescission signed by both Subconsultant and its assignee or factoring institution issued to Jacobs, to the effect that any existing agreement of assignment/factoring will not apply to any payments made against this Agreement. It is Jacobs' preference for this option to be utilized.
  2. Identification of assignee or factoring institution and "remit to" instructions. (If Subconsultant cannot issue a rescission letter and plans to assign monies or factor, Items 13.B.3 and 13.B.4 MUST also be provided.)
  3. An agreement letter issued to Jacobs and signed by both Subconsultant and the assignee or factoring institution containing affirmative statements from the assignee or factoring institution to the effect that Jacobs/Owner retains all rights of setoff and backcharge; that lien claimants and/or trust account beneficiaries will have a priority claim over the assignee or factor; and that Jacobs/Owner may pay directly the monies owed a valid lien claimant or trust account beneficiary and set it off against monies owing Subconsultant, its assignee and/or its factoring institution.
  4. If Items 13.B.2 and 13.B.3 apply, every monthly invoice submitted by Subconsultant must be supported by Waiver of Lien forms properly completed and signed by each subconsultant and supplier retained by Subconsultant in connection with the services hereunder, serving as proof that they received payments from the most recent payment to Subconsultant by Jacobs. The Waiver of Lien form must be acceptable to Jacobs. Final Releases, in the form included in Appendix II, shall be submitted from every subconsultant and supplier, as well as from Subconsultant, in support of Subconsultant's request for final payment. Any invoice not supported by the required documentation will not be considered for payment.

## **ARTICLE 14 LAW AND REGULATIONS**

- A. Subconsultant, its employees and representatives, shall at all times comply with any applicable laws, ordinances, statutes, rules and regulations, federal, state, territorial,

provincial, local, county and municipal laws, particularly those relating to wages, hours and working conditions. Subconsultant shall procure and pay for all permits and inspections required by any governmental authority for any part of the services and shall furnish any bonds, security or deposits required to permit performance of the services. Subconsultant agrees to defend, indemnify and hold Jacobs and Owner harmless from and against any and all claims arising out of or in connection with any violation or infraction by Subconsultant of any law, order, citation, rule, regulation, standard, ordinance or statute, and from any fines or penalties imposed on account of violation thereof.

- B. Subconsultant shall not under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution, laws or regulations relating to this Agreement or to the performance thereof, without Jacobs' prior written approval.

## **ARTICLE 15 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION**

- A. Subconsultant shall comply fully with the requirements of Executive Order Numbers 11246 as amended, 11625, 11701, and 11758 relating to employment practices. If applicable, the provisions of 41 CFR 60-1.4, 60-250.4, and 60-741.4 are hereby incorporated by reference, and Subconsultant agrees to adhere to said regulations. In the performance of its services, Subconsultant shall not discriminate against any employee or applicant for employment because of race, creed, color, age, marital status, sex, or national origin.
- B. Subconsultant will take all affirmative action required by law to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, age, sex, or national origin, including but not limited to employment, upgrading, demotion, or transfer, recruitment advertisement, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

## **ARTICLE 16 COOPERATION**

- A. In performing its services for Jacobs, Subconsultant shall cooperate with Jacobs personnel in providing full disclosure of information obtained in the performance of such services or during the term of this Agreement, and which relate to Jacobs' business. Subconsultant shall not in any way disclose or list Jacobs or the Owner as its client in any promotional materials or other documents without the express written consent of Jacobs.
- B. Subconsultant shall cooperate fully with Jacobs, Owner, other consultants, local government officials, and others as may be directed by Jacobs. This shall include representation at meetings, discussions and hearings, as may be requested by Jacobs, and furnishing plans and other data, as may be requested from the time to time from the Subconsultant to affect such cooperation.
- C. Subconsultant shall maintain all books, documents, design calculations, papers, and accounting records and shall make such materials available for inspection and copying, by Jacobs and/or Owner, at its offices at all reasonable times during the period required for access to records under the Prime Contract.

## **ARTICLE 17 PROCUREMENT INTEGRITY**

- A. Jacobs respects the integrity of the procurement process. It is Jacobs' policy to comply with, and require that our subconsultants comply with, the letter and spirit of the law and the rules imposed by our clients in this regard.
- B. The Federal government has adopted broad and detailed sets of regulations governing standards of conduct for contractors. These regulations serve as a model for public clients most of whom have either adopted the Federal standards, follow them as a matter of practice, or follow them because their projects are federally funded. Furthermore, different government clients have established specific requirements as to how their employees must conduct themselves in their relationships with industry. Because of the extent and complexity of procurement regulations, the subconsultant and its' employees need to ensure that they understand the requirements.
- C. By signing this Agreement, the Subconsultant represents and certifies that no bribes or gratuities (in the form of entertainment, gifts, kick backs or otherwise) were offered or given by Subconsultant, or an agent or representative of Subconsultant, to an officer or employee of the Owner or Jacobs with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amendment of this Agreement. If Jacobs should acquire reasonable evidence that the foregoing representations are false, this Agreement will be subject to immediate termination for default, in addition to other remedies available to Jacobs.
- D. To promote the highest ethical standards with respect to procurement integrity, it is Jacobs' Policy to follow Federal law and rules with all public clients, particularly concerning the gathering and use of confidential information, even if state and local laws are silent concerning specific integrity issues.
- E. The Federal Procurement Integrity Act regulates the conduct of competing contractors during the procurement process. Contractors are prohibited from: (i) receiving a competitor's bid or proposal information or other confidential information prior to award of the contract to which such information relates; (ii) having undisclosed employment discussions with a government employee who is engaged personally and substantially in the procurement process; and, (iii) compensating a former government employee who served as a procurement official during a one year compensation ban. The phrase "bid or proposal information" means a competitor's prices, rates, estimates, or technical data. Confidential information includes the government's technical or price evaluations, rankings, or competitive range determinations; and any information marked as confidential, proprietary, or source selection. The prohibition on receiving this information extends to materials received from any unauthorized source including government personnel, disgruntled employees, or consultants. By signing this Agreement, the Subconsultant represents and certifies that, in its efforts to solicit and develop this Agreement, the Subconsultant and its agents and representatives have not committed any act which would be prohibited under the Federal Procurement Integrity Act, if that Act were applicable hereunder. If Jacobs should acquire reasonable evidence that the foregoing representations are false, this Agreement will be subject to immediate termination for default, in addition to other remedies available to Jacobs.

**ARTICLE 18**  
**CONFIDENTIALITY AND PUBLICITY**

- A. Subconsultant shall not disclose to third parties or use for any purpose other than performance of its services, any information provided to Subconsultant by Jacobs and/or Owner in connection with the performance of this Agreement, or any information developed or obtained by Subconsultant in performance of this Agreement, without the written consent of Jacobs, unless (1) the information is known by Subconsultant prior to obtaining same; (2) the information is, at the time of disclosure, then in the public domain; or (3) the information is obtained by or from a third party who did not receive same, directly or indirectly, from Jacobs or Owner and has no obligation of confidentiality with respect thereto. Subconsultant shall impose the foregoing restrictions upon its employees and other representatives.
- B. Subconsultant and/or its subcontractors, suppliers or others with whom it contracts shall not issue any news releases, statements to news media, interviews, or articles for publication related to the Project without the written consent of Jacobs.

**ARTICLE 19**  
**NOTICES**

All notices required or permitted hereunder will be in writing and, if to Jacobs, sufficient if delivered to the following addresses:

Jacobs \_\_\_\_\_ Inc.  
Project Office Address  
City, State Zip  
Attn: Name (Project Manager)  
Tel: XXX-XXX-XXXX  
Fax: XXX-XXX-XXXX  
Email:

Jacobs \_\_\_\_\_ Inc.  
Office Address  
City, State, Zip  
Attn: \_\_\_\_\_ (Procurement Manager)  
Tel: XXX-XXX-XXXX  
Fax: XXX-XXX-XXXX  
Email:

All notices to be delivered to the Subconsultant will be sufficient if delivered to the Subconsultant's Representative at the following address:

Company Name  
Physical Address  
P.O. Box, Suite, etc.  
City, State, Zip  
Attn: Name  
Tel: XXX-XXX-XXXX  
Fax: XXX-XXX-XXXX  
Email:

## **ARTICLE 20 MISCELLANEOUS**

- A. Subconsultant represents and warrants that its signing of this Agreement and the performance of its services hereunder is not and will not be in violation of or conflict with any other contract, agreement, or understanding to which the Subconsultant is a party, nor in violation or conflict with any federal, state, or local laws.
- B. Jacobs reserves the right to sublet any work to any other subconsultants or subcontractors. Nothing in this Agreement shall be construed as a restriction upon Jacobs' freedom to enter into contracts with others for the performance of services required under the Prime Contract.
- C. All documents, information and other data to be furnished by Subconsultant to Jacobs under this Agreement, whether finished or not, shall be delivered to and become the property of Owner and, subject to the limitations of applicable law, may be used by Owner without restriction.
- D. The parties have read this Agreement and agree to be bound by its terms, and further agree that it, together with the Appendices listed below, constitutes the complete and exclusive agreement between them and which supersedes all proposals, oral or written, and all other communications between them relating to the subject matter of this Agreement. This Agreement may not be amended orally, but only by an instrument in writing signed by the party against whom enforcement of such amendment is sought. The Appendices are as follows:
  - Appendix I – Scope of Services and Time Schedule
  - Appendix II – Compensation and Payment
  - Appendix III – Jacobs Health, Safety and Environment Requirements
  - Appendix IV – Prime Contract



- E. No breach of any obligation nor waiver of any condition in this Agreement shall be deemed waived unless expressly waived in writing by the party who might otherwise assert such breach or condition. Waiver by a party of any breach or condition in one instance shall not invalidate this Agreement, nor shall it be considered to be a blanket or continuing waiver by such party nor a waiver by such party of any other breach or condition hereunder.
- F. If any provision of this Agreement is determined to be illegal or unenforceable for any reason, the same shall be severed from the Agreement and the remainder of the Agreement shall be given full force and effect.
- G. These parties agree that they and their respective successors and assigns shall be bound by this Agreement.

**IN WITNESS WHEREOF**, Jacobs and the Subconsultant have caused this Agreement to be duly executed:

\_\_\_\_\_  
(Subconsultant)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**JACOBS CIVIL INC.**  
(Jacobs)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX I**  
**Scope of Services and Time Schedule**

(PROJECT NAME)  
(CITY, STATE)

SUBCONSULTING AGREEMENT NO. \_\_\_\_\_  
(DISCIPLINE)

A. Services

1.
  - a.
  - b.
    - i.
    - ii.
    - iii.
2.
  - a.
  - b.
    - i.
    - ii.
    - iii.

B. Time Schedule

1. The Subconsultant shall begin providing its' Services on or about \_\_\_\_\_.
2. The Subconsultant shall complete all of its' work and cease providing its' Services on or before \_\_\_\_\_.

**APPENDIX II**  
**Compensation & Payment**

**(PROJECT NAME)**  
**(CITY, STATE)**

**SUBCONSULTING AGREEMENT NO. \_\_\_\_\_**  
**(DISCIPLINE)**

**A. Firm Fixed (Lump Sum) Price Agreement**

Subconsultant's full compensation for full and complete performance by Subconsultant of all work and compliance with all terms and conditions of this Agreement shall be a firm fixed (lump sum) price of \$\_\_\_\_\_ (Agreement Price).

1. If no "Schedule of Values" has been established for payment purposes, estimates shall be made monthly of the amount and value of the work accomplished and services performed by Subconsultant under this Agreement. The estimates shall be prepared by Subconsultant and accompanied by supporting data required by Jacobs.
2. Payment, upon properly executed and approved invoices shall be made by Jacobs in accordance with Article 2.A of the Agreement, of ninety percent (90%) of the amount approved.
3. Upon satisfactory completion by Subconsultant and acceptance by the Owner of the work done by Subconsultant, Subconsultant will be paid the unpaid balance of the money due for work under this Agreement, including retained percentages.
4. Before final payment under this Agreement, or before settlement upon termination of the Agreement, and as a condition precedent thereto, Subconsultant shall execute and deliver to Jacobs a release of all claims against Jacobs arising under or by virtue of this Agreement (see Supplement 2), other than any claims that are specifically excepted by Subconsultant from the operation of the release in amounts stated in the release.
5. The following information or documentation must be submitted with each invoice:
  - a. Invoice date.
  - b. Name, street address and telephone number of firm.
  - c. Project name and Subconsultant Agreement number.
  - d. Description of services provided and itemized amounts.
6. Invoices shall also contain any other information as reasonably required by Jacobs.

*[Alternate Provision for Time & Material Agreements.]*

**A. Time & Material with a Not To Exceed Price Agreement**

Jacobs will compensate Subconsultant on a time-and-materials basis calculated by multiplying the fixed hourly rates established in the attached "Rate Schedule" by the hours of work performed by Subconsultant and the actual cost of the direct expenditures incurred if allowed in the attached Supplement 1 "Rate Schedule" up to a Not To Exceed Amount of \$\_\_\_\_\_ (Agreement Price). Costs incurred by the Subconsultant for performance of this Agreement shall be allowable to the extent they are reasonable, allocable, and determined to be allowable in accordance with the provisions of this Agreement [*and the cost principles and procedures in Subpart 31.2 of the Federal Acquisition Regulations (48 CFR Part 31.2)*]. The fixed hourly rates include all applicable salary related expenses, taxes, benefits, worker's compensation, as well as overhead and profit. There shall be no markup or profit on costs other than as part of the labor rate.

1. If no "Schedule of Values" has been established for payment purposes, estimates shall be made monthly of the amount and value of the work accomplished and services performed by Subconsultant under this Agreement. The estimates shall be prepared by Subconsultant and accompanied by supporting data required by Jacobs.
2. Payment, upon properly executed and approved invoices shall be made by Jacobs in accordance with Article 2.A of the Agreement, of ninety percent (90%) of the amount approved.
3. Upon satisfactory completion by Subconsultant and acceptance by the Owner of the work done by Subconsultant, Subconsultant will be paid the unpaid balance of the money due for work under this Agreement, including retained percentages.
4. Before final payment under this Agreement, or before settlement upon termination of the Agreement, and as a condition precedent thereto, Subconsultant shall execute and deliver to Jacobs a release of all claims against Jacobs arising under or by virtue of this Agreement (see Supplement 2), other than any claims that are specifically excepted by Subconsultant from the operation of the release in amounts stated in the release.
5. The following information or documentation must be submitted with each invoice:
  - e. Invoice date.
  - f. Name, street address and telephone number of firm.
  - g. Project name and Subconsultant Agreement number.
  - h. Description of services provided and itemized amounts.
6. Invoices shall also contain any other information as reasonably required by Jacobs.

OR

*[Alternate Provision for Cost Reimbursable Agreements.]*

A. Cost Reimbursable with a Not To Exceed Price Agreement

Jacobs will compensate Subconsultant on a cost-reimbursable basis plus a fixed fee of \$\_\_\_\_\_ up to a Not To Exceed Amount of \$\_\_\_\_\_ (Agreement Price). Cost

reimbursable items shall be defined in the attached Supplement 1 "Rate Schedule" including any overhead and profit markups. The invoicing and payment of costs shall be in accordance with the clause in Jacobs' Prime Contract [*entitled Allowable Cost and Payment (Federal Acquisition Regulations 48 CFR 52.216-7)*] and shall be allowable to the extent they are reasonable, allocable, and determined to be allowable in accordance with the provisions of this Agreement [*and the cost principles and procedures in Subpart 31.2 of the Federal Acquisition Regulations (48 CFR Part 31.2)*].

1. If no "Schedule of Values" has been established for payment purposes, estimates shall be made monthly of the amount and value of the work accomplished and services performed by Subconsultant under this Agreement. The estimates shall be prepared by Subconsultant and accompanied by supporting data required by Jacobs.
2. Payment, upon properly executed and approved invoices shall be made by Jacobs in accordance with Article 2.A of the Agreement, of ninety percent (90%) of the amount approved.
3. Upon satisfactory completion by Subconsultant and acceptance by the Owner of the work done by Subconsultant, Subconsultant will be paid the unpaid balance of the money due for work under this Agreement, including retained percentages.
4. Before final payment under this Agreement, or before settlement upon termination of the Agreement, and as a condition precedent thereto, Subconsultant shall execute and deliver to Jacobs a release of all claims against Jacobs arising under or by virtue of this Agreement (see Supplement 2), other than any claims that are specifically excepted by Subconsultant from the operation of the release in amounts stated in the release.
5. The following information or documentation must be submitted with each invoice:
  - i. Invoice date.
  - j. Name, street address and telephone number of firm.
  - k. Project name and Subconsultant Agreement number.
  - l. Description of services provided and itemized amounts.
6. Invoices shall also contain any other information as reasonably required by Jacobs.

*[Alternate Provision if Performing in Conjunction with a Federal Government Contract That Has a Limitation of Funds or Limitation of Cost Clause.]*

2. This Agreement is issued pursuant to Jacobs' Prime Contract with the U.S. Government. The Prime Contract is being incrementally funded by the Government and is subject to a Limitation of Funds or Limitation of Cost clause. Under the Limitation of Funds or Limitation of Cost clause, the Government is not obligated to reimburse Jacobs for costs incurred in excess of monies actually committed by the Government to Jacobs' Prime Contract. The monies currently available through the Prime Contract are not sufficient to fully fund this Agreement. Therefore, Jacobs must incrementally fund this Agreement so that monies committed to this Agreement when added to other funding commitments will not exceed the Limitation of Funds or Limitation of Cost clause in the Prime Contract. The maximum amount currently allocated and

committed to this Agreement is \$\_\_\_\_\_. The parties contemplate that before this amount is reached, the Government will commit additional funding up to the full Agreement Price. The amount stated above plus any subsequent adjustments made in writing by Jacobs shall be referred to as "Committed Funds". To ensure that Jacobs' obligations under this Agreement do not exceed the funds available under the Prime Contract, the parties hereby agree to the following:

- i. The Subconsultant agrees to perform up to the point at which the total amount payable by Jacobs, including reimbursement in the event of termination, approximates, but does not exceed, the Committed Funds. The Subconsultant shall immediately notify Jacobs in writing whenever it has reason to believe that the costs it expects to incur (and the profit it expects to earn), plus any termination expenses under the Termination clause of this Agreement, plus any outstanding changes or claims for which the Subconsultant seeks compensation, when added to all costs previously incurred (and profit previously earned), approximate 75% of the Committed Funds. The notice shall state the date on which the Subconsultant will have incurred costs approximating but not exceeding the Committed Funds (the Constructive Termination Date). The Subconsultant must give a minimum of 30 days prior written notice of the Constructive Termination Date. Within this 30-day period, Jacobs shall notify the Government and seek additional funds through the Prime Contract. If the Government provides additional funds under the Prime Contract, Jacobs may notify the Subconsultant that additional funds have been committed to this Agreement and the new Committed Funds amount. If additional funds are committed to this Agreement, the Subconsultant shall continue performance on a continuous, uninterrupted basis and shall again notify Jacobs as above whenever costs incurred during the course of the Agreement or as a result of termination, or for changes or claims, approximate 75% of the Committed Funds. If Jacobs does not notify the Subconsultant that additional funds have been committed to this Agreement, the Subconsultant shall stop work on the Constructive Termination Date and this Agreement shall be considered terminated for the convenience of Jacobs.
- ii. Jacobs is not obligated to pay or compensate the Subconsultant for any cost, expense, damage or claim in excess of the Committed Funds. The Subconsultant is not obligated to continue performance under this Agreement or otherwise incur any cost, expense, loss or amount in excess of the Committed Funds. The Subconsultant hereby expressly assumes the sole risk and responsibility for managing its work and performance so that it does not incur any cost or expense, whether during the course of the Agreement or as a result of termination, or for changes or claims, in excess of Committed Funds.
- iii. No notice, communication, or representation in any form other than that specified in this clause or from any person other than the Agreement Administrator shall affect the amount of Committed Funds stated above.
- iv. If the Agreement is terminated for any reason including but not limited to Congressional failure to commit funds for continuation of the project, or



any other reason, Jacobs' liability to Subconsultant shall be strictly limited to Committed Funds. The Subconsultant understands and agrees that in the absence of specific written notice as required by this clause, Jacobs is not obligated to seek additional funding from the Government and Jacobs will not compensate the Subconsultant in excess of the Committed Funds.

- v. When and to the extent that the amount of Committed Funds is increased, any costs, expense, or profit incurred before the increase that are in excess of the previously funding commitment, shall be compensable to the same extent as if incurred prior to the increase in Committed Funds.
- vi. Change orders shall not be considered an authorization to exceed the amount of Committed Funds, unless they contain a statement specifically increasing the amount of Committed Funds.
- vii. If Jacobs does not commit sufficient additional funds to allow for completion of the Agreement work, the Subconsultant is entitled to a portion of its profit equaling the percentage of completion of the work at the time of termination provided that this does not exceed the Committed Funds.

**APPENDIX II, Supplement 1**  
**Rate Schedule**

**(PROJECT NAME)**  
**(CITY, STATE)**

**SUBCONSULTING AGREEMENT NO. \_\_\_\_\_**  
**(DISCIPLINE)**

<b>PROJECT SERVICES</b>
-------------------------

<i>Project Engineer</i>	\$	<i>per hour</i>
<i>Mechanical Engineer</i>	\$	<i>per hour</i>
<i>Technician</i>	\$	<i>per hour</i>
<i>Typist</i>	\$	<i>per hour</i>

<b>EXPENSES</b>
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*Expenses other than salary costs, defined as drawing reproduction, special fees or permits, health and safety equipment, and third party services, may be billed at cost plus 10 percent (10%) for overhead and profit.*

<b>NOTES</b>
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*All rates and mark-ups above are all-inclusive. As such they represent complete reimbursement for all cost or expense incurred by the Subconsultant including, but not limited to all base wages, benefits, taxes, insurance, overhead and profit.*

**APPENDIX II, Supplement 2**  
**Final Release Form**

**(PROJECT NAME)**  
**(CITY, STATE)**

**SUBCONSULTING AGREEMENT NO. \_\_\_\_\_**  
**(DISCIPLINE)**

TO: Jacobs \_\_\_\_\_  
(Address)  
(City, State Zip)  
Attention:

Subconsultant: \_\_\_\_\_.

Subconsulting Agreement Number: \_\_\_\_\_.

Jacobs' Project Number: \_\_\_\_\_.

The term "Owner" as used herein refers to: \_\_\_\_\_.

This release is made in accordance with the provisions of the above referenced Subconsulting Agreement including any and all modifications thereto.

In consideration of \$\_\_\_\_\_ as total payment made under the Subconsulting Agreement, by Jacobs to the Subconsultant for labor, materials, and services furnished by the Subconsultant in the performance of above referenced Subconsulting Agreement, the Subconsultant hereby unconditionally releases Jacobs and the Owner, their officers, agents, employees, assigns or heirs from any and all claims whatsoever arising out of, or during, the performance of said Agreement, other than such claims, if any, that have the consent of Jacobs and the Owner as being specifically excepted from the terms of this Release, stated as follows: (if none, so state)\_\_\_\_\_

Subconsultant further certifies that all labor, materials and services furnished in connection with the performance of said Agreement and all applicable state and federal payroll taxes and payroll insurance have been paid.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Subconsultant

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**APPENDIX III**  
**Jacobs Health, Safety and Environment Requirements**

(PROJECT NAME)  
(CITY, STATE)

SUBCONSULTING AGREEMENT NO. \_\_\_\_\_  
(DISCIPLINE)

(Revision \_\_\_\_, dated \_\_\_\_, 20 pages)

**APPENDIX IV**  
**Prime Contract**

**(PROJECT NAME)**  
**(CITY, STATE)**

**SUBCONSULTING AGREEMENT NO. \_\_\_\_\_**  
**(DISCIPLINE)**

A. Prime Contract Flowdown Provisions incorporated by reference  
*[Item Nos. 1 and 2 below are for use in conjunction with Federal Government Contracts.]*

1. The clauses of the Federal Acquisition Regulation (FAR) and the Agency supplements set forth below are incorporated by reference. The obligations of Jacobs to the Government as provided in these clauses shall be deemed to be the obligations of the Subcontractor to Jacobs. Clauses referenced below shall be those in effect on the effective date of Jacobs' prime contract identified elsewhere.

2. Wherever necessary to make the context of the clauses set forth below applicable, the term "Contractor" shall mean Subcontractor, the term "Contract" shall mean this Agreement, and the term "Government", "Contracting Officer" and equivalent phrases shall mean JACOBS, except: (a) in the phrases "Government Property", "Government-Owned Property", "Government Equipment", "Government-Furnished Property", and "Government-Owned Equipment"; (b) when a right, act, authorization, or obligation can be granted or performed only by the Government or prime contract Contracting Officer or its duly authorized representative; (c) when access to proprietary financial information or other proprietary data is required; (d) when title to property is to be transferred directly to the Government or (e) where specifically modified as noted below.

B. Prime Contract Flowdown Provisions in full text.

*[Alternate Provision for other than Federal Government Contracts.]*

A. The Prime Contract follows this page.

